Remarks:

Amendments to the claims:

Claims 1-39 are pending in this application. By this Amendment, claims 1-3, 5-13, 17, 20-31, 33-35 and 37-39 are amended. Claims 1-3, 6-10, 12, 13, 17, 20-31, 33-35, 37 and 38 are amended to correct typographical and grammatical errors and antecedent basis; claim 11 is amended to address rejection under 35 USC 112; and claim 39 is amended to address a rejection under 35 USC 101.

No new matter is added to the application by this Amendment. Support for the features added to claim 1 can be found in Figs. 3(a)-3(c), 4(a)-4(c), 7(a)-7(e), 9(a) and 9(b), as originally filed. Figs 10(a) and 10(b), claim 5 and the specification, as originally filed, at, for example, paragraphs [0175]-[0181] of U.S. Patent Publication No. 2006/0123852 (hereinafter "the '852 application") for the present application provide support for the new features added to claim 2. The new features added to claim 11 find support in the specification, as originally filed, at, for example, in paragraph [0042] of the '852 application. The new features added to claim 39 find support in claim 1, as originally filed, and within the specification, as originally filed, at, for example, paragraphs [0001] and [0120] of the '852 application.

Regarding the rejections of claim 11 under 35 USC 112 and claim 39 under 35 USC 101:

Applicants traverse the Examiner's rejections of the foregoing claims.

The Patent Office alleges that claim 11 is indefinite under 35 USC 112, second paragraph, because it is impossible for matter to exist in only two dimensions and that reciting that the form is two-dimensional renders the claim indefinite. Additionally, the Patent Office alleges that claim 39 is improper under 35 USC 101 because the claim defines an improper method/process by failing to set forth any positive steps delimiting how this use is actually practiced. Applicants respectfully disagree with these allegations by the Patent Office.

Claim 11 was amended to require the closing means is thermal bimetal snap element and in the form of a pre-existing three dimensional shape or an inversion of the pre-existing three dimensional shape.

Claim 39 was amended to be directed to method for dispensing detergent or detergent additive into an automatic washing machine over a plurality of washing cycles, the method comprising the steps of providing an automatic washing machine detergent dispensing device according to claim 1, contacting wash liquor of the automatic washing machine with the detergent or detergent additive of the automatic washing machine detergent dispensing device, and dispensing detergent loaded wash liquor from the automatic washing machine detergent dispensing device into the automatic washing machine.

In light of the amendments to claims 11 and 39, Applicants submit that the rejections under 35 USC 112, second paragraph, and 101, respectively, are overcome.

Applicants respectfully request withdrawal of these rejections to the claims.

Regarding the rejection of claims 1-6, 9-15 and 37-39 under 35 USC 102(b) as allegedly being anticipated by U.S. Patent No. 2,698,022 to Fahnoe:
Applicants traverse the Examiner's rejection of the foregoing claims as allegedly being anticipated by Fahnoe.

Prior to discussing the relative merits of the Examiner's rejection, the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of

the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada,* 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention. However, "anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.,* 290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter,* 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson,* 169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

Thus when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.,* 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.,* 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.,* 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich,* 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

The Patent Office alleges that Fahnoe discloses each and every feature recited in claims 1-6, 9-15 and 37-39. Applicants respectfully disagree with the allegations by the Patent Office.

Amended independent claims 1, 37 and 39 require a body having an inlet aperture located at an end of the body to allow wash liquor to contact the detergent and an outlet aperture located at the end of the body to allow detergent loaded wash liquor to exit the body.

Amended independent claim 2 requires the body having a first end, a second end located opposite to the first end, and an outlet aperture located at the first end of the body to allow the detergent to exit the body, and closing means to close the outlet aperture at or before a start of a rinse cycle of a dishwasher, wherein the closing means comprises a thermal activator located at the second end of the body.

As acknowledged by the Patent Office Fahnoe discloses a body for containing wash additives having an open top (alleged readable on an inlet), an outlet at the bottom, and means for closing the outlet (see page 3 of the Office Action). Figs. 1 and 3 of Fahnoe clearly illustrate a receptacle 10 having an open top adjacent to the hook 14 and an outlet at the bottom adjacent to the closure 11, the pivot 12 and the arm 13. Additionally, Figs. 4 and 6 of Fahnoe clearly illustrate a receptacle 20 having an open top adjacent to the hook 26 and an opening 21 at the bottom adjacent to the bimetallic strip 22, the valve 23, the hook 34 and the spring 25. Nowhere does Fahnoe disclose that the open top and the outlet or opening are located at the same end of the receptacles as required by the present claims.

Thus, Fahnoe fails to disclose a body having an inlet aperture located at an end of the body to allow wash liquor to contact the detergent and an outlet aperture located at the

end of the body to allow detergent loaded wash liquor to exit the body as required by claims 1, 37 and 39.

Figs. 1-6 of Fahnoe illustrate that the thermal responsive bimetallic closure element 11 is adjacent to the outlet at the bottom of the receptacle 10 and that the bimetallic strip 22 is adjacent to the opening 21 at the bottom of the receptacle 20. None of Fahnoe's bimetallic elements (11, 22) are located at an end of the receptacles that is located opposite to the bottom end of receptacles which has the outlet or opening.

Thus, Fahnoe does not disclose an outlet aperture located at the first end of the body to allow the detergent to exit the body, wherein the closing means comprises a thermal activator located at the second end of the body as required by claim 2.

Because the features of independent claims 1, 2, 37 and 39 are neither taught nor suggested by Fahnoe, Fahnoe cannot anticipate, and would not have rendered obvious, the features specifically defined in claims 1, 2, 37 and 39 and their dependent claims.

For at least these reasons, claims 1-6, 9-15 and 37-39 are patentably distinct from and/or non-obvious in view of Fahnoe. Reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. 102(b) are respectfully requested.

Regarding the rejection of claims 1-15 and 20-39 under 35 USC 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2002/0100773 to Rodd et al. (hereinafter "Rodd") in view of Fahnoe:

The Applicants respectfully traverse the rejection of the foregoing claims in view of Rodd and Fahnoe.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459]

(1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); In re O'Farrell, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The Patent Office acknowledges that Rodd fails to teach an opening for the inlet of wash liquor. The Patent Office introduces Fahnoe as allegedly remedying the deficiencies of

Rodd by allegedly teaching an opening for detergent input that is fully capable of also receiving wash water. Moreover, the Patent Office alleges that it would have been obvious at the time of the invention to modify Rodd and include an inlet, as this requires only routine skill and is obviated by the teachings of Fahnoe. Applicants respectfully disagree with the allegations of the Patent Office.

The Patent Office clearly acknowledges that Rodd does not teach or suggest an inlet in any shape or form. As set forth above with respect to the rejection under 102, Fahnoe does not teach or suggest a body having an inlet aperture located at an end of the body to allow wash liquor to contact the detergent and an outlet aperture located at the end of the body to allow detergent loaded wash liquor to exit the body. Thus, even if a skilled artisan were to modify Rodd with Fahnoe, as alleged by the Patent Office, the resulting combination would not achieve the present invention. Therefore, neither Rodd nor Fahnoe, taken singly or in combination, teaches or suggests a body having an inlet aperture located at an end of the body to allow wash liquor to contact the detergent and an outlet aperture located at the end of the body to allow detergent loaded wash liquor to exit the body as required by claims 1, 37 and 39.

The Patent Office alleges that the wax 23 of Rodd is equivalent to the presently claimed thermally responsive closing means (see page 4 of the Office Action). Figs. 7 and 8 of Rodd illustrate that the rigid bottom chamber 22 and the wax 23 contained therein are located at the same end of the apparatus as the discharge passage 26 and directly adjacent to the discharge passage 26. Thus, Rodd fails to disclose an alleged thermally responsive closing means located at an end that is located opposite to the discharge passage 26.

As discussed above regarding the 102 rejection, Fahnoe fails to teach or suggest an outlet aperture located at the first end of the body to allow the detergent to exit the body, wherein the closing means comprises a thermal activator located at the second end of the body. Thus, the resulting combination (from modifying Rodd with Fahnoe), as alleged by the Patent Office would fail to achieve the present invention. Accordingly, Rodd and

Fahnoe, taken singly or in combination, fail to teach or suggest an outlet aperture located at the first end of the body to allow the detergent to exit the body, wherein the closing means comprises a thermal activator located at the second end of the body as required by claim 2.

Because these features of independent claims 1, 2, 37 and 39 are not taught or suggested by Rodd and Fahnoe, taken singly or in combination, these references would not have rendered the features of claims 1, 2, 37 and 39 and their dependent claims obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 16-19 under 35 USC 103(a) as allegedly being unpatentable over Fahnoe in view of U.S. Patent No. 4,142,676 to Hattori:
The Applicants respectfully traverse the rejection of the foregoing claims in view of Fahnoe and Hattori.

The Patent Office acknowledges that Fahnoe fails to teach use of two bimetal elements. The Patent Office introduces Hattori as allegedly remedying the deficiencies of Fahnoe by allegedly teaching a bimetal valve with first and second bimetal discs that interact. Moreover, the Patent Office alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to use two bimetal elements, as taught by Hattori, for response to multiple temperature levels. Applicants respectfully disagree with the allegations of the Patent Office.

Hattori fails to remedy the deficiencies of Fahnoe as set forth above with respect to claim 1, from which claims 16-19, directly or indirectly, depend. Thus, Fahnoe and Hattori, taken singly or in combination, fail to teach or suggest a body having an inlet aperture located at an end of the body to allow wash liquor to contact the detergent and an outlet

aperture located at the end of the body to allow detergent loaded wash liquor to exit the body as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Fahnoe and Hattori, taken singly or in combination, these references would not have rendered the features of claims 16-19 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

Andrew N Parfomak

01 May 2009

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CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-272-8300 on the date shown below:

Allyson Ross — 01 May 2009 (Date)

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